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PARALLEL PATHS: ANALYSING THE OVERLAPPING JURISDICTION OF CCI AND SECTORAL REGULATORS IN INDIA

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I. ABSTRACT

In India, the coexistence of competition regulation through the Competition Commission of India (CCI) and sector-specific regulation by various sectoral regulators has given rise to a complex regulatory landscape. This abstract provides a glimpse into the challenges and dynamics of the overlapping jurisdiction between CCI and sectoral regulators, focusing on its impact on competition enforcement and regulatory coherence. The Indian regulatory framework is characterized by the presence of independent sectoral regulators for diverse industries such as telecom, energy, and financial services, each with its own set of laws and regulations. In parallel, the CCI was established to promote and maintain competition in the market, ensuring a level playing field and preventing anti-competitive practices. This dual regulatory structure sometimes leads to conflicts and overlaps in jurisdiction, creating uncertainty for businesses and stakeholders. This study delves into the key issues arising from the coexistence of CCI and sectoral regulators. It explores cases where disputes have arisen, leading to legal battles and questions regarding the boundaries of their authority. Moreover, it investigates the potential consequences of these conflicts on market competition, innovation, and consumer welfare. The research also examines the regulatory gaps that may emerge due to this duality, as well as the challenges in achieving regulatory consistency and coherence. It highlights the need for a harmonized approach to competition enforcement and sector-specific regulation to strike a balance between promoting competition and achieving sectoral policy objectives. The coexistence of CCI and sectoral regulators in India presents a multifaceted regulatory landscape with inherent challenges.

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II. KEYWORDS

Overlapping jurisdiction, Regulatory Coherence, Sectoral Regulators, Boundaries, Market Competition.

III. INTRODUCTION

When India opened its economy to the rest of the world in 1991, it implemented the Liberalisation, Privatisation, and Globalisation (LPG) Policy. To control the newly opened economy, numerous structural changes were made. Because of its resultant optimal resource allocation, a market-based economy was thought to guarantee economic efficiency. Unexpectedly, the closed economy under the supervision of the government gave way to an open economy under the control of the market. The success of the move depended on a number of market improvements. This included regulators that were focused on particular industries (Sector-Specific Regulators). Many legislations from before 1991 were rendered useless. The Monopolies and Restrictive Trade Practises Act, 1969 was one of the laws[3]. The country's shifting economic climate was not successfully adjusted by it. To assess the MRTP Act, a high-level committee was formed and is being led by Shri S.V.S. Raghavan[4]. According to the global advancements in the field of antitrust law, it suggested an entirely novel statute on competition. This is precisely why the Competition Act was introduced in 2002, marking a transition from curbing unfair trade practices and preventing monopolies to fostering competition within the market[5]. Nonetheless, the enforcement of the Act encountered delays due to legal challenges questioning the constitutionality of certain provisions, which were brought before the courts. In the wake of the Liberalization, Privatization, and Globalization (LPG) policy, as these sector-specific regulators gained prominence, conflicts over jurisdiction have emerged between them and the Competition Commission of India. After 1991, several

[3] "Pradeep S. Mehta, 'Competition vs Regulation: The Best Way Forward' The Hindu Business Line (Chennai, 16 September 2005)".
[4] "Tanya Thomas, 'Turf War Rages between CCI and TRAI over Telecom Tariffs' The Hindu Business Line (Chennai, 27 July 2017)".
[5] "Competition Authorities and Sector Regulators: What is the best operational framework, VIEWPOINT (CUTS Centre for Competition, Investment & Economic Regulation, Jaipur), October 2008".

regulators with a focus on a particular industry were introduced[6]. India has adopted a multi-sector regulatory system wherein distinct regulators are designated for various sectors, each possessing its own jurisdiction. This diverse regulator arrangement provides a comprehensive means of comprehending individual sectors and facets of transactions. Assigning jurisdiction of specific sectors to dedicated regulators results in a comprehensive grasp of those specific industries.

Simultaneously, this necessitates obtaining approvals from different sectors when their jurisdiction is invoked in a particular transaction. This, in turn, leads to increased costs associated with acquiring approvals, coupled with extended timeframes for securing such endorsements[7]. However, this also contributes to rendering the Indian market more challenging to access for investors, especially those less familiar with the intricacies of the Indian regulatory landscape. The need to obtain multiple approvals escalates the expense of the process for most participants.

A. REVIEW OF LITERATURE

CCI VS. SEBI- Jurisdiction over Credit rating Agencies[8], The paper delves into the jurisdictional challenge raised in the In ***Re: Brickwork Ratings India Pvt. Ltd. and CRISIL Ltd***[9]. and Others case. It offers a comprehensive analysis of this case, drawing comparisons with previous instances of sectoral regulation cases that involved CCI jurisdictional issues. The paper scrutinizes how the issue of overlapping jurisdiction is to be addressed and highlights the recommendations put forth by both the author and the court regarding this matter. In our study along with these facets we aim to analyse the stance of the judiciary for the same. ***The Jurisdictional Tussle- CCI VS. SEBI***[10], the paper examines the jurisdictional disputes between these two entities, along with conflicts related to regulatory matters, enforcement actions, and shared

[6] "Chapter VII, Report of the Working Group on Competition Policy, Planning Commission, Government of India, February 2007, 43".
[7] "GOVERNMENT OF INDIA, REPORT OF THE FINANCIAL SECTOR LEGISLATIVE REFORMS COMMISSION VOLUME I 53".
[8] "CCI VS. SEBI- Jurisdiction over Credit rating Agencies, Indra Kumar, 2020 SCC Online Del 598".
[9] "Brickwork Ratings India Pvt. Ltd vs Crisil Ltd. And Others on 29 December, 2020, Competition Commission Of India, Case No. 47 of 2019."
[10] "The Jurisdictional Tussle- CCI VS. SEBI, https://www.livelaw.in/columns/securities-and-exchange-board-of-india-sebi-competition-commission-of-india-cci-174125."

responsibilities. Additionally, the paper assesses the consequences of this tussle, with a particular focus on the insights provided by the current authors. This study was restricted to the tussle between CCI and SEBI only on other hand our paper deals with the jurisdictional overlap with other regulators as well as the suggestions how to resolve the same or deal with the same. ***Interactions between competition Authorities and Sector Regulator***[11]**,** the paper centered on exploring the interplay and dynamics between competition authorities and sector regulators. It delved into the ways these entities engage with each other, whether through collaboration, cooperation, or the possibility of conflicts in their roles and responsibilities within the regulatory framework. The primary emphasis was on gaining insights into the consequences and results of these interactions, which have contributed significantly to the current research. This research was restricted to analysis of the issues where as we aim to provide the stance of the judicicary along with exploring the challenges, implications and strategies to overcome the same. ***Overlapping jurisdiction of regulators in India: a never ending battle?***[12] This paper pinpoints the areas of overlapping jurisdiction between SEBI and the Competition Commission of India (CCI). It sheds light on the core reasoning for having a plethora of regulators. Ultimately, the analysis presented in this paper provides a resolution to the regulatory puzzle, which has been perceived as a barrier to attracting investments from both domestic and international sources across various sectors, which has been taken into reference by the current researchers. This study was helpful when the researcher was dealing with the tussle between the two authorities whereas it lacked the aspect of the overlapping challenges with other sectors as well, we aim to cover that in our study.

B. RESEARCH QUESTION/S

- What is the need of balance and co-ordination b/w CCI and the Sectoral Regulators?

[11] "Interactions between competition Authorities and Sector Regulator, http://competitionlawblog.kluwercompetitionlaw.com/2018/05/24/sectoral-regulationcompetition-law-jurisdictional-overlaps-tracing-viable-solution-indian-context/, No. 13 of 2022."

[12] Overlapping jurisdiction of regulators in India: a never ending battle, NALSAR University of Law, Hyderabad, INDIAN JOURNAL OF POLITICAL SCIENCE, Vol. 55, No. 4, Oct 2022.

- What are the specific areas of jurisdictional overlap between CCI and sectoral regulators in India?
- What are the key challenges and implications arising from this jurisdictional overlap?
- How can a harmonious regulatory framework between CCI and sectoral regulators be achieved?

C. OBJECTIVES OF THE STUDY

- To understand the need of balance and co-ordination b/w CCI and the Sectoral Regulators.
- To Examine the Need for Balance and Coordination Between CCI and Sectoral Regulators
- Inorder to Identify Specific Areas of Jurisdictional Overlap Between CCI and Sectoral Regulators in India
- To Investigate Key Challenges and Implications Arising from Jurisdictional Overlap
- To Explore Strategies for Achieving a Harmonious Regulatory Framework

D. STATEMENT OF RESEARCH PROBLEM

The concurrent jurisdiction of the Competition Commission of India (CCI) and sectoral regulators in India has led to a complex regulatory landscape, raising concerns about potential overlaps, conflicts, and inefficiencies in enforcement. This research paper aims to investigate and assess the extent of overlapping jurisdiction between the CCI and sectoral regulators in India, identify the challenges and issues arising from this overlap, and propose recommendations for achieving a more harmonious and effective regulatory framework.

E. SIGNIFICANCE OF THE STUDY

The analysis of the overlapping authority of the Competition Commission of India (CCI) and sectoral regulators in India is critical due to the deep consequences for regulation effectiveness and competition in the market. This study has the ability to

provide light on the equilibrium between sector-specific regulation and competition enforcement, which is essential for fostering ethical business practises, deterring anti-competitive behaviour, and maintaining the welfare of customers. A more dynamic and customer-focused economic environment in India can be promoted by identifying the difficulties, tensions, and possibilities brought on by the coexistence of different regulatory agencies.

F. SCOPE AND LIMITATIONS OF THE STUDY

The goal of the study is to clarify the amount and significance of jurisdictional overlaps by conducting an extensive analysis of case studies, legal frameworks, and regulatory practises. With recommendations for harmonising their duties, enhancing regulatory efficacy, and fostering competition within various sectors of the Indian economy, this study seeks to provide light on prospective areas where conflicts exist and harmony within these regulatory organisations. However, the study has some limitations, including the ability for changing legal interpretations and the changing character of regulatory regimes. It may also be difficult to conduct in-depth analyses of certain businesses due to data availability issues and resource limitations, necessitating a targeted approach. Despite these drawbacks, the study has the potential to add insightful commentary to the ongoing debate over regulatory change in India.

G. RESEARCH METHODOLOGY

There are two ways of conducting a legal research which include Doctrinal and Non-doctrinal. The current research paper is prepared based on the data's collected by the researcher using doctrinal method of research. Doctrinal method of research means presenting the research paper by the data collected by the researcher using secondary sources. The researcher has used the doctrinal approach for a better interpretation of the topic and also to understand the topic in a broader view. The secondary sources the researcher has used include articles, journals, commentaries, books by prominent authors, research papers and newspaper pieces. The researchers of the present paper have used various secondary sources including reports on review of jurisdictional conflicts between CCI and sectoral Regulators of various journals, the same contains

analysis of competition issues in various sector's and policy recommendations. Further, the researchers have also used CCI's Annual report as an authoritative source for understanding CCI's activities, cases, and its impact on various sectors and other review articles as well on Jurisdictional Conflicts between CCI and Sectoral Regulators which are the academic studies focusing on the challenges and solutions regarding jurisdictional overlaps.

H. SOURCES OF DATA

The main source of data that has been used for the current research paper is secondary source of data. In order to understand the topic from the various viewpoints by different researchers and authors the researchers have understood the topic from various secondary sources using various legal databases like journal articles, book reviews, books and commentaries/opinion pieces by various prominent authors. Further, in order to interpret the law, the researchers; have also used primary sources which include Statutes, Regulations, Policies and Judicial decisions.

IV. NEED OF BALANCE AND CO-ORDINATION B/W CCI & SECTORAL REGULATORS

A sustainable and resilient economic expansion trajectory is dependent on effective implementation of competition laws and industry-specific regulation. The Competition Commission protects fair market dynamics by limiting excessive power concentration and fostering healthy competition among enterprises. It promotes innovation, efficiency, and positive outcomes for customers by limiting monopolistic practises and encouraging a competitive environment. The market becomes a fertile environment for advancement when businesses compete for the attention of customers via improvements in quality and price concessions.[13]

Regulators that focus on certain industries, on the other hand, are aware that every sector has its own special characteristics that need for specialised oversight. Such legislation makes certain that vital industries like healthcare, finance, and

[13] "See Maher M. Dabbah, The Relationship between competition authorities and sector regulators, 70(1) THE CAMBRIDGE LAW JOURNAL 113, 119".

telecommunications function in a fair, dependable, and consistent manner with societal objectives. Sector-specific laws preserve consistency and easy access while fostering investment and creativity by enforcing regulations, assuring protection, and regulating inherent monopolies.

A complete and unified regulatory framework can only be achieved through cooperation among the Competition Commission of India (CCI) and sectoral regulators. Sectoral regulators have specialised knowledge that enables them to successfully address difficulties unique to a certain sector, while CCI focuses on general competition principles and eliminating anti-competitive practises across industries[14]. Coordination of efforts makes sure that sector-specific details are taken into account when addressing competition issues, supporting ethical business conduct, minimising market distortions, and creating an equitable economic backdrop which incorporates the advantages of both sector-specific regulation and competition enforcement. This collaborative approach not only improves the efficiency of regulations but also assures a comprehensive strategy for fostering competition and sustainable growth across a range of industries[15].

To achieve balanced economic development, these two aspects need to work together. The probability of excessive reliance on a single sector will be decreased by effective enforcement of the competition laws that will avoid market distortion and promote a varied economic environment[16]. This diversity promotes steady growth while enhancing resistance to economic shocks. Sector-specific rules, however, will address difficulties that certain industries can present, promoting an environment where both developing and established sectors can thrive without jeopardising the interests of customers or the well-being of society.

[14] "Hemant Singh & Radha Naruka, Telecom Regulatory Authority of India & Competition Commission of India: Jurisdictional Conflict, SOCIAL SCIENCE RESEARCH NETWORK 1, 35 (2013), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2252530".

[15] "See Samir R. Gandhi & Rahul Rai, CCI and TRAI- Regulating in Harmony, BUSINESS LINE, April 24, 2009 http://www.thehindubusinessline.com/todays-paper/tp-opinion/cci-and-trai-regulatinginharmony/article1049961.ece".

[16] "Harsimran Singh, TRAI and CCI fighting the turf war, THE ECONOMIC TIMES, 18 July 2007, http://articles.economictimes.indiatimes.com/2007-07-18/news/28461865_1_consultation-papernumberportability-trai-chairman".

V. ISSUES AND IMPLICATIONS OF JURISDICTIONAL OVERLAP

- **Ambiguous Legal Frameworks**

Legal frameworks that are unclear are a crucial contributing factor. The division of duties amongst the CCI and sectoral regulators may not always be clearly defined by regulations and statutes governing competition and industry-specific activity. In situations combining both sector-specific issues and competition concerns, this lack of specificity might cause misunderstanding regarding which institution has power. As a result, disagreements regarding jurisdiction may occur, which could result in missed opportunities for regulatory coverage and delays in resolving urgent issues.

- **Evolving Nature of Market Dynamics**

The constantly changing nature of competitive dynamics is another reason for overlap. The complex interrelationships between sectors in modern economies, where decisions made in one business might have a detrimental impact on others, are a defining feature of these economies. The distinction between issues relating to competition and difficulties unique to a given industry is frequently blurred by this interdependence[17]. As old sectoral borders grow less defined, rapid technological improvements and shifting business models further exacerbate the situation. To successfully address developing concerns that cross industries, such as online platforms affecting numerous industries at the same time, regulatory agencies must adapt and collaborate.

- **Cumbersome Process of Co-ordination**

Furthermore, slow-moving sectoral regulators and the CCI coordination process may prevent prompt and efficient action. Diverging perspectives and agendas may impede the capacity to develop complete remedies that deal with both competitive issues and

[17] "Nikhil Kanekal, Sangeeta Singh & Utpal Bhaskar, Competition watchdog faces fresh challenge to jurisdiction, MINT HT MEDIA".

sector-specific challenges.[18] In turn, this might compromise the larger objectives of encouraging honest competitiveness, creativity, and the well-being of customers.

Legal frameworks must be simplified and defined in order to define the CCI's and sectoral regulators' respective responsibilities and mitigate these difficulties. It may be possible to close the gap and enable a more comprehensive approach to regulation by establishing systems for communication and information sharing across various institutions. Furthermore, regulatory organisations that take a proactive stance in increasing their capacity will have the knowledge necessary to handle complex problems brought on by changing market dynamics. Complex legal systems and ever-changing market conditions are the root causes of the CCI's and sectoral regulators' overlap in jurisdiction. Addressing this overlap, despite creating ambiguity and potential contradictions, can result in improved effectiveness and efficiency of regulatory decisions that promote legitimate competition as well as equitable growth in the economy[19].

VI. DIFFERENT SECTOR REGULATORS AND THE CONFLICT

- **Petroleum and Natural Gas Regulatory Board Act, and Competition Commission of India:**

The Petroleum and Natural Gas Regulatory Board (PNGRB) was established in accordance with the PNGRB Act of 2006 to regulate many facets of the natural gas and petroleum sector, including the distribution of products, transport, and processing. With a focus on promoting competition and fair trade among businesses, its duties include controlling access to common carriers' networks and gas distribution systems. Infractions are subject to civil fines under the Act, which increase for unfair or deceptive trade practises[20]. Despite the fact that the PNGRB Act and the Competition Act were passed four years apart, disputes have nonetheless arisen because the two

[18] "Vidya Krishnan, Sun Pharma-Ra.nbaxy deal in CCI crosshairs, LIVEMINT, July 29, 2014. Available at: http://www.livemint.com/Companies/PwftvxqaZ0vojwb8GzWEdK/Sun-PharmaRanbaxy-deal-in-CCIcrosshairs.html?utm_source=copy".

[19] "Nikhil Kanekal, Sangeeta Singh &UtpalBhaskar, Competition watchdog faces fresh challenge to jurisdiction, MINT HT MEDIA, January 23, 2011".

[20] "TATA Power Delhi Distribution Limited v. M/s. GAIL (India) Limited, Case No. 94 of 2013, MANU/CO/0038/2014, Competition Commission of India".

bodies' overlapping responsibilities. Due to the Board's authority granted by the PNGRB Act to control industry competition policies, when anti-competitive practises are allegedly taking place, disputes over jurisdiction arise with the Competition Commission of India (CCI)[21].

A series of cases highlights the complexities of PNGRB and CCI jurisdictional issues. In "***Shri Awadh Singh v. Petroleum and Natural Gas Regulatory Board"***[22], the CCI delegated authority to PNGRB on the grounds that PNGRB's competencies involve issuance of regulations as a kind of secondary legislation. The CCI nevertheless looked at PNGRB compliance in "***Faridabad Industries Association v. Adani Gas"***[23], although concluding that the matter was outside the purview of its investigation. Although rigorous separation is difficult because of sectoral duplication, the CCI has tried to separate competition-related issues from other issues across the petroleum and natural gas industry. The CCI acknowledged PNGRB norms and based its ruling in the Notice for ***"Acquisition of Equity & Tata Power Distribution v. GAIL"***[24] case on them, enabling the loser to seek redress from the regulator.

Clarifying jurisdictional boundaries is also necessary, as evidenced by a Delhi High Court case involving public sector businesses and a cartel accusation. When PNGRB had already made an order, the High Court refused to grant CCI jurisdiction. The PNGRB's jurisdiction is not the only one that applies to competition issues; CCI also has authority over those issues, it is vital to remember this. This position begs the question of whether one body's order prevents another from exercising its unique jurisdiction. The CCI's uneven strategy with regard to PNGRB overlaps stands in stark contrast to its pro-active approach in matters involving the Telecom Regulatory

[21] "M/s Royal Energy Ltd. v.M/s Indian Oil Corporation Ltd., M/s Bharat Petroleum Corporation Ltd. and M/s Hindustan Petroleum Corporation Ltd (2012) CompLR 563 (CCI)".
[22] "Shri Awadh Bihari Singh vs. Petroleum and Natural Gas Regulatory Board, Case No. 75 of 2013,MANU/CO/0002/2014, Competition Commission of India".
[23] "Faridabad Industries Association v. Adani Gas Limited, Case No. 71 of 2012, MANU/CO/0063/2014, Competition Commission of India".
[24] "TATA Power Delhi Distribution Limited v. M/s. GAIL (India) Limited, Case No. 94 of 2013, MANU/CO/0038/2014, Competition Commission of India".

Authority of India (TRAI)[25]. In order to reduce uncertainty and allow effective competition regulation in the Indian context, it is essential to define the relationships between regulatory authorities like TRAI, PNGRB, and CCI.

- **Telecommunication Regulatory Authority of India, and Competition Commission of India:**

Since network service companies depend on each other's infrastructure through interconnection fees, the Telecommunication Regulatory Authority of India (TRAI) is essential to guaranteeing collaboration and fair competition in the telecom sector. However, the market's inherent dynamics frequently do not promote cooperation, which results in high fees and unfair pricing. In order to solve this, the TRAI Act of 1997 established the organisation with the goal of externally enforcing collaboration and competition via governing many facets of the telecom sector.

There are parallels in the objectives and methods of TRAI and the Competition Commission of India (CCI), notwithstanding their separate mandates. As seen by situations where TRAI's judgements have competition ramifications and are criticised by the CCI, TRAI's suggestions to the Dept. of Telecommunications affect the level of competition. In situations involving merger control, there is a disagreement among TRAI's suggestions and CCI's assessment criteria, raising worries of detrimental long-term competition implications. TRAI's concerns with monopolistic pricing and tariff fixation also generate similar concerns[26].

Different interpretations of the jurisdictional restrictions under the TRAI Act have been made by TRAI and CCI as a result of this ambiguity. Legal squabbles between TRAI and the now-defunct Monopolies and Restrictive Trade Practises Commission resulted in cases like "***Sea T.V Ltd. v. Star India Ltd"***[27]. due to jurisdictional disputes. The courts ruled that TRAI's unique status should take precedence over general

[25] "Ashish Sinha, CCI eases compliance needs for M&A deals, THE FINANCIAL EXPRESS, April 6, 2013. Available at: http://www.financialexpress.com/news/cci-eases-compliance-needs-for-m-a-deals/1098432".
[26] "DR. SOUVIK CHATTERJI COMPETITION LAW IN INDIA AND INTERFACE WITH SECTORAL REGULATORS".
[27] "Sea T.V Network Ltd. v. Star India Pvt. Ltd., (2006) 2 CompLJ (Telecom DSAT) 487, ¶ 10 (Telecom Dispute Settlement & Appellate Tribunal)".

regulations such as the Competition Act of 2002. The complexity of jurisdictional overlaps was brought to light in "***Consumer Online Foundation v. Tata Sky Ltd"***[28]., when CCI argued that it had exclusive jurisdiction over matters relating to competition despite TRAI laws.

Particularly, where telecom disputes contain both technical and competitive dimensions, these instances highlight the necessity to define jurisdictional limits and establish collaboration between TRAI and CCI. Decisions that strike a balance between competition objectives and sector-specific difficulties may be made as a result of the coordination of expertise among the two regulating organisations.

- **Electricity Regulatory Commission and Competition Commission of India:**

In this perspective, the electrical industry is perhaps more troublesome. The Electricity Act's Section 60 gives the industry regulator authority to deal with market dominance issues, although in practise, this authority has frequently been circumscribed by the legislation and varies from case to case.

For example, in ***Suo moto vs. North Delhi Power Ltd. & Bases & Ors***[29]., the CCI provided notifications after finding three power providers responsible of misusing their dominant positions: BSES Rajdhani Power, BSES Yamuna Power, and North Delhi Power Ltd (NDPL). The Delhi Electricity Regulatory Commission, on the other hand, opposed to CCI's intervention, arguing that such concerns fell solely under their purview in accordance with the authority granted to them by the Electricity Act, 2003.

The DERC, however, took the opposite stance in ***Neeraj Malhotra, Advocate vs. North Delhi Power Ltd. & Ors***[30]., where the Discoms claimed that only the DERC under the EC Act had the authority to handle the matters relating to the anti-competitive conduct of electrical supply companies. In this instance, the DERC firmly asserted in its communication to the CCI that, even though all matters relating to electricity tariff must be resolved in accordance with the EC Act and the DERC Rules, claims of

[28] "Case No. 2/2009, Available at:
<http://www.cci.gov.in/sites/default/files/MainOrderConsumer250411_0.pdf>".
[29] "Shri Neeraj Malhotra, Advocate v North Delhi Power Ltd (CCI, 11 May 2011); M/s HT Media Ltd v M/s Super Cassettes Industries Ltd (CCI, 1 October 2014)".
[30] "VERSHA VAHINI, INDIAN COMPETITION LAW (eds. 2016, Lexis Nexis), pg 456-77".

unlawful conduct, such as misuse of a superior position by the DISCOMS, fell under the purview of the CCI.

VII. STANCE TAKEN BY INDIAN COURTS

- **Stance of Indian Courts:**

The courts and the CCI have taken opposing positions on this matter in the context of India. According to the CCI's interpretation of the boundaries of its respective jurisdiction, even when sectoral laws may contain a mandate for competition, the CCI retains sole authority to look into claims of anti-competitive behaviour.[31] The CCI's ability to look into anti-competitive behaviour in industries subject to competition legislation has been overturned by the Indian High Courts, though. It is significant that the 2010 case of ***Steel Authority of India Ltd. v. Competition Commission of India***[32], set a legal precedent. This steel industry-related case highlighted the value of working together and communicating amongst the CCI and sector-specific regulators. The court acknowledged that the goals of competition law and industry-specific regulation can be met in concert and do not have to be mutually incompatible, which has further shaped our understanding of jurisdictional concerns. For instance, the Delhi High Court halted the CCI's investigation into cartelization by incumbent telecom firms in a 2017 case on the grounds that the TRAI was the only authority with authority over the issue at hand. The TRAI Act, which by itself excludes subjects covered by the MRTP Act, 1970, from its jurisdiction to decide disputes, holds that this is true even though the TRAI only has a general mandate for competition.

The Delhi High Court was crucial in influencing how jurisdictional overlap was perceived in the landmark case ***CCI vs. Bharti Airtel and Ors. (2012)***[33]. The court acknowledged the harmonious relationship of the CCI and industry-specific regulators, highlighting the need for the CCI to refrain from interfering in subjects that are solely the purview of sectoral regulators. By highlighting the collaborative nature

[31] "T. RAMAPPA, COMPETITION LAW IN INDIA (ed. 3, 2006, Oxford University Press), pg 567-98".
[32] "Steel Authority of India Ltd. v. Competition Commission of India (2010) 10 SCC 744"
[33] "Competition Commission of India v. Bharti Airtel (CIVIL APPEAL Numbers 11843 OF 2018) before Hon'ble Supreme Court of India)".

of their duties, this decision underlined the necessity of a consistent interpretation of the rules regulating competition and industry-specific regulation.

In a different key case from 2014, ***Ericsson vs. CCI***[34], the jurisdictional issues surrounding the misuse of supremacy in the telecommunications sector were at issue. Clear power boundaries must be established in order to prevent overlaps, according to the courts, notably the Competition Appellate Tribunal (COMPAT). The court's decisions in the present instance advanced the law's understanding of the delicate balancing act that needs to be performed by sectoral regulators and the CCI, especially in those sectors where the systems of regulation are well-established.

When addressing jurisdictional overlap, the courts have done so in cases like these and others by taking into account a number of different considerations. Keeping in mind the sectoral regulators' expertise in their own fields, one important factor is avoiding duplication of effort. The CCI, which is in charge of guaranteeing adequate competition in marketplaces, and sector-specific regulators, who concentrate on issues unique to particular industries, have different functions, which have been recognised by the courts. This acknowledgement serves as the cornerstone of a collaborative strategy that attempts to maximise the benefits of each regulatory body's particular expertise.

VIII. SOLUTION FOR RESOLVING THE CONFLICT

To mitigate the potential for conflicts over jurisdiction between the CCI and other regulatory bodies, amendments were introduced to the Competition Act in 2007. These changes modified Section 21 and introduced a new Section 21A, granting the CCI the authority to initiate cases on its own accord. This marked a departure from the previous provision where the decision to initiate proceedings was at the discretion of one of the parties. Should a regulator perceive that the CCI is intruding upon its domain, the regulator must present the rationale behind this viewpoint and can seek the CCI's perspective. Instances have arisen where regulators attempted to overstep the bounds of the CCI's jurisdiction. A prominent example of this is the Reserve Bank

[34] Telefonaktiebolaget lm Ericsson v Competition Commission of India W.P.(C) 464/2014 & CM Nos.911/2014 & 915/2014.

of India (RBI). Under Section 44 of the Banking Regulations Act, 1949, provisions concerning the merger of banking companies are outlined, along with the RBI's authorization to approve various mergers. This particular provision encroaches upon the CCI's jurisdiction.

Reliance Industries lodged a complaint against multiple oil and gas companies with the Competition Commission. Subsequently, the implicated companies approached the court, arguing that the Commission lacked the authority to hear the case and that the matter fell outside its purview. The court then issued a stay on the proceedings before the Competition Commission[35].

Courts have adopted various approaches over time to settle jurisdiction-related conflicts. In the case of ***Competition Commission of India v. Bharti Airtel***,[36] the Supreme Court provided a verdict regarding the distinct responsibilities of TRAI and the Competition Commission. The Competition Commission itself has asserted that despite the presence of multiple sectoral regulators, the exclusive authority to investigate cases linked to anti-competitive behavior rests with them.

Both the competition commission and the regulators have taken advantage of this gap in the system to independently initiate actions, which goes against the collaborative spirit intended by the lawmakers. This not only leads to redundant efforts but also enables parties to select favourable forums, resulting in confusion that discourages investment in India. To tackle these issues, it is crucial to establish a clear and organized framework of cooperation through legislation. Additionally, fostering a culture of institutional collaboration between these entities is vital for effectively executing this framework, which is currently lacking in India[37]. Furthermore, the Commission has the authority to prohibit the implementation of the combination if it believes that the proposed merger could negatively impact competition in the relevant market within India. As a result, the involved business entity will be treated as if the

[35] "Section 14(1) of the SAST Regulations; Umakanth Varottil, Investment Agreements In India: Is There An "Option"?, NUJS LAW REVIEW, Vol. 4, 201".
[36] "Competition Commission of India v. Bharti Airtel (CIVIL APPEAL Numbers 11843 OF 2018) before Hon'ble Supreme Court of India)".
[37] "Ashok V. Desai, INDIA'S TELECOMMUNICATIONS INDUSTRY: HISTORY, ANALYSIS, DIAGNOSIS 51 (2006)".

merger never took place, and it will face penalties determined by the relevant regulatory authority based on the violated law.

It is to be noted that based on the Financial Sector Law Reforms Commission Report of 2013 ('FSLRC Report')[38] the structure of cooperation between the Competition Commission of India (CCI) and sectoral regulators is crucial to ensure effective enforcement of competition laws while respecting sector-specific regulations.

- There could be a primary mandate wherein CCI focuses on enforcing competition laws and preventing anti-competitive behaviour across sectors, while the sectoral regulators can be responsible for overseeing specific industries and ensuring compliance with sector-specific regulations.
- Moreover, in the event that a matter is brought before the competition commission and involves a party active within sectors regulated by a sectoral authority, it is imperative for the commission to notify the relevant sectoral regulator. Following the issuance of this notice, an internal meeting between the two entities should take place, aimed at determining the jurisdictional aspects of the case and deciding which body is better equipped to resolve the dispute.
- If consensus cannot be reached through this process, the responsibility should lie with the Competition Appellate Tribunal to determine whether the competition commission or the sectoral regulator should oversee the case. Alternatively, a joint bench with representatives from both entities might be necessary. It's important to emphasize that once a decision is made regarding which entity holds jurisdiction, the other entity forfeits the opportunity to adjudicate on the matter. This approach effectively prevents scenarios in which the competition commission might decline to address issues related to technical regulations.
- Further, In order to facilitate consistent sharing of information and technical know-how, the establishment of a functional working group or team of experts

[38] "FSLRC Report, at 131-133".

dedicated to the matter is essential. This approach draws inspiration from the model adopted in the United Kingdom, where both regulators and the commission convene at regular intervals to deliberate on matters of overlap. This dynamic fosters comprehensive dialogues, allowing both sides to extract insights from thorough discussions on overlapping concerns.

- Moreover, the Planning Commission, in its Working Group on Competition Policy, has offered pertinent recommendations to foster this institutional ethos by facilitating coordinated staff transfers on a deputation basis and facilitating the exchange of experts between both entities. This suggestion holds particular significance within the context of India's landscape, where conflicts over jurisdiction and decision-making authority have emerged between regulators and the CCI. Therefore, establishing a clear delineation of cooperation and fostering a collaborative culture could precipitate a significant transformation from the current state of jurisdictional conflicts to a collaborative environment, wherein both the regulatory bodies collaboratively enforce competition law in India[39].
- It is suggested to develop a coordinated jurisdictional framework that clearly delineates the boundaries of authority for CCI and sectoral regulators. Establish a mechanism for regular communication and coordination between these entities to resolve potential conflicts. The same can be substantiated with the example: The United States has the Hart-Scott-Rodino Act, which requires merging parties to notify both the Federal Trade Commission (FTC) and the Department of Justice (DOJ). These agencies have clear guidelines on how they coordinate and decide which agency will review a particular merger, minimizing conflicts.
- Further, it is suggested to encourage CCI and sectoral regulators to enter into MoUs specifying their respective roles, responsibilities, and procedures for handling cases that fall within the overlapping jurisdiction. These MoUs can

[39] "Jithesh Tilak, Regulating M&As An Insight Into Competition Laws in India, INTERNATIONAL BUSINESS LAWYER, 2004".

outline the principles of cooperation and coordination. In the European Union, there is a system of cooperation and information exchange between the European Commission and national competition authorities, allowing them to work together efficiently on cases involving cross-border competition issues and the same can be implemented here as well.

- Establishment of a Sector-Specific Competition Ombudsman or Advisory Body responsible for mediating disputes and providing recommendations on jurisdictional conflicts between CCI and sectoral regulators. This body could include experts in competition law and sector-specific regulations. Like in the case of Australia, Australia's Competition Policy Review (Harper Review) recommended the creation of a "National Access and Pricing Regulator" to deal with competition issues in infrastructure sectors, ensuring consistent application of competition principles.
- As we can see through the United Kingdom's Enterprise Act 2002 provides a clear framework for the concurrent exercise of competition powers by the Competition and Markets Authority (CMA) and sectoral regulators. It outlines the process for disputes and cooperation, ensuring a coherent approach. Taking reference from the same, an enabling legislation that explicitly addresses concurrent jurisdiction between CCI and sectoral regulators can be introduced. Define clear criteria for determining which authority should take precedence in specific cases, considering factors like market power, consumer welfare, and sector-specific objectives.

IX. CO-OPERATION INSTEAD OF CONFLICT: THE WAY FORWARD

For India, the most viable course of action appears to be the establishment of a unified authority for the selective enforcement of competition law. Competition authorities possess the requisite expertise to decipher instances of anti-competitive behaviour. A singular regulatory body would also ensure consistency in applying regulations governing the competition domain. To achieve this, a legislative amendment is necessary, designating the Competition Commission of India (CCI) as the exclusive

authority responsible for regulating competition within the market, while sectoral regulators focus on economic, technical, and access regulations. However, granting primacy to a singular authority doesn't entail the complete dissolution of sectoral regulators. Instead, it entails that the Competition Commission can leverage the specialized knowledge and counsel of various regulators to facilitate the enactment of necessary legislative amendments and to aid in the enforcement process.

X. CONCLUSION

Numerous strategies are employed internationally to address conflicts arising from overlapping jurisdiction. These encompass concurrent jurisdiction, exclusive jurisdiction, and cooperative jurisdiction. However, the suitability of each approach varies depending on the country's circumstances. In exclusive jurisdiction, sectoral regulators assert the authority to handle specific matters. This approach allows regulators the discretion to either adhere to or disregard competition law. Nonetheless, this approach is ill-suited to the Indian context, as it could weaken the authority of the Competition Commission and undermine its original purpose. Alternatively, the concurrent approach, is likely to falter in the Indian context due to power struggles inherent in the Indian administrative framework.

While the cooperative approach may be considered the most desirable, the most practical solution appears to be one where a centralized authority holds precedence, while simultaneously drawing upon the specialized insights and guidance of sectoral regulators. This approach would not only be advantageous for the Competition Commission but also align with the requirements of sectoral regulators.

However, it's essential to recognize that this cooperative framework might not be effective if both the CCI and sector regulators still strongly favor maintaining their exclusive jurisdictions. While agreements like memoranda of understanding and cooperative arrangements among regulators may be established with good intentions, issues could emerge during implementation if the regulators are not fully committed or aligned with such a framework. A more sustainable approach in India would likely involve adopting a concurrent jurisdiction model. This approach would necessitate amendments to both the current Competition Act of 2002 and the respective sectoral

regulations. These amendments would ensure that the obligation for cooperation is legally binding. Through these amendments, sector regulators would gain certain powers to enforce the provisions of the Competition Act of 2002 within their sectors, in collaboration with the CCI. This collaborative approach would involve close coordination.

In this study, we have delved into the complex issue of overlapping jurisdiction between the Competition Commission of India (CCI) and sectoral regulators in India. Our analysis aimed to address the following research questions: How does the concurrent jurisdiction of CCI and sectoral regulators impact competition enforcement in India? And What are the implications of this jurisdictional overlap for regulatory efficiency and effectiveness? To address these questions, we have provided a comprehensive overview of the legal and regulatory framework governing competition enforcement in India, emphasizing the concurrent jurisdiction of CCI and sectoral regulators. We have discussed the challenges and complexities that arise due to this dual regulatory regime, including potential conflicts, delays, and uncertainties. Our study has contributed to the existing literature by shedding light on the practical implications of overlapping jurisdiction in India's regulatory landscape. We have highlighted that while the CCI plays a crucial role in promoting competition, sectoral regulators focus primarily on sector-specific issues. This division of responsibilities can create tension and hinder efficient enforcement.

However, we must acknowledge the limitations of our study. We have primarily focused on the conceptual framework and discussed the potential challenges without delving deeply into specific case studies or empirical data. Future research could benefit from empirical analyses of how overlapping jurisdiction impacts real-world competition cases and regulatory outcomes.

In light of our findings, we offer the following recommendations for future research and policy considerations:

- Future studies should conduct empirical research to assess the actual impact of overlapping jurisdiction on competition enforcement in India. This could involve analyzing case outcomes, investigating instances of jurisdictional

conflicts, and assessing the efficiency and effectiveness of regulatory enforcement.

- Comparative studies with other jurisdictions facing similar challenges of overlapping jurisdiction can offer valuable insights into best practices and potential solutions.

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